

# CHANGE REQUEST COVER SHEET

**Change Request Number:** 13-07

**Date Received:** 10/17/2012

**Title:** Definitizing Unpriced Contract Modifications

---

**Name:** Eugene Scott

**Phone:** 202-493-4639

**Policy OR Guidance:** Guidance

**Section/Text Location Affected:** T3.10.1 A6 Contract Modifications

**Summary of Change:** Clarifies the process for definitizing a ceiling priced contract modification. The change (1) requires that ceiling priced modifications be definitized within no later than 180 days (or shorter time period if specified by the CO); (2) requires a definitization schedule to be included in the unpriced modification and (3) allows a unilateral definitization to be made by the COCO if agreement with the contractor is not reached.

**Reason for Change:** The change clarifies the process to definitize an unpriced contract modification. This change is in part the result of comments made by the DOT OIG during the audit of the ERAM program.

**Development, Review, and/or Concurrence:** AGC-500, AAP-110, Aeronautical center contracting, AAQ Division contracts managers.

**Target Audience:** Contracting Officers

**Potential Links within FAST for the Change:** none

**Briefing Planned:** No

**ASAG Responsibilities:** Approve

**Potential Links within FAST for the Change:** none

**Links for New/Modified Forms (or) Documents (LINK 1)**

**Links for New/Modified Forms (or) Documents (LINK 2)**

**Links for New/Modified Forms (or) Documents (LINK 3)**

## SECTIONS EDITED:

Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

**Section 6 : Contract Modifications** [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

## SECTIONS EDITED:

### **Section 6 : Contract Modifications**

**Old Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

**Section 6 : Contract Modifications**

a. Only a CO, or person delegated specific authority to execute contract modifications, may execute contract modifications. Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests.

b. *Types of Contract Modifications.* Contract modifications fall into the following categories (see Appendix to this Guidance for a detailed description of the types of modifications and associated authorities that permit contracts to be modified):

(1) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

- (a) Make equitable adjustments when necessary;
- (b) Definitize quick-response contracts;
- (c) Reflect other agreements of the parties which modify the terms of contracts; or
- (d) Make changes requested by the contractor.

(2) *Unilateral.* A unilateral modification is a contract modification made by the CO, without advance concurrence by the contractor. Unilateral modifications are used to:

- (a) Make administrative changes;
- (b) Issue changes under the Changes clause; or

(c) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.).

c. *Extension of Contracts.*

(1) *Before Expiration.* The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(2) *After Expiration.* The CO must **not** extend a contract after it has expired.

**New Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

**Section 6 : Contract Modifications**

a. *Authority.* Only a CO or person delegated specific authority to execute contract modifications, may execute contract modifications.

b. *Ceiling-Priced Modifications.*

(1) Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests. If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:

- (a) All requirements for performance or delivery;
- (b) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and
- (c) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for definitization. The definitization should be completed within 180 days after the date of the ceiling-priced modification or before completion of 40% of the work to be performed, whichever occurs first.

(2) If agreement on the modification's price is not reached by the target date or within any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.

c. *Types of Contract Modifications.* Contract modifications fall into the following categories (see the Appendix to this guidance section for a detailed description of the types of modifications and associated authorities for modifying contracts):

(1) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

- (a) Make equitable adjustments when necessary;
- (b) Definitize quick-response contracts;
- (c) Reflect other agreements of the parties which modify the terms of contracts; or
- (d) Make changes requested by the contractor.

(2) *Unilateral.* A unilateral modification is a contract modification made by the CO, without advance concurrence by the contractor. Unilateral modifications are used to:

- (a) Make administrative changes;
- (b) Issue changes under the Changes clause; or
- (c) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.).

d. *Extension of Contracts.*

(1) *Before Expiration.* The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(2) *After Expiration.* The CO must **not** extend a contract after it has expired.

**Red Line Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

**Section 6 : Contract Modifications**

FAST Archive 10/2012

CR 13-07

p. 4

a. Authority. Only a CO, or person delegated specific authority to execute contract modifications, may execute contract modifications.

**b. Ceiling-Priced Modifications.**

(1) Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests. **If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:**

(a) All requirements for performance or delivery;

(b) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and

(c) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for

definitization. The definitization should be completed within 180 days after the date of the ceiling-priced modification or before completion of 40% of the work to be performed, whichever occurs first.

(2) If agreement on the modification's price is not reached by the target date or with in any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.

c. Types of Contract Modifications. Contract modifications fall into the following categories (see the Appendix to this [Guidance guidance section](#) for a detailed description of the types of modifications and associated authorities that permit for modifying contracts to be modified):

(1) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

(a) Make equitable adjustments when necessary;

(b) Definitize quick-response contracts;

(c) Reflect other agreements of the parties which modify the terms of contracts; or

(d) Make changes requested by the contractor.

(2) *Unilateral*. A unilateral modification is a contract modification made by the CO, without advance concurrence by the contractor. Unilateral modifications are used to:

- (a) Make administrative changes;
- (b) Issue changes under the Changes clause; or
- (c) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.).

**ed.** *Extension of Contracts*.

(1) *Before Expiration*. The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(2) *After Expiration*. The CO must **not** extend a contract after it has expired. -

---